

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA	§	
	§	
v.	§	No. 3:09-CR-210-B
	§	
JESSE WILLIAM MCGRAW (1)	§	

GOVERNMENT'S NOTICE OF EXPERT WITNESSES
OR WITNESSES WITH EXPERTISE

The United States of America, by and through its United States Attorney, files this
its Notice of Expert Witnesses or Witnesses with Expertise.

1. Pursuant to Fed. R. Crim. P. 16(a)(1)(G), the government "must give to the
defendant a written summary of any testimony that the government intends to use under
Rules 702, 703, or 705 of the Federal Rules of Evidence during its case-in-chief at trial."
The summary must describe 1) the witness's opinions, 2) the bases and reasons for the
opinions, and 3) the witness's qualifications. The purpose of the rule is to "minimize
surprise that often results from unexpected expert testimony, reduce the need for
continuances, and to provide the opponent with a fair opportunity to test the merit of the
expert's testimony through focused cross-examination." Advisory Committee Note, Fed.
R. Crim. P. 16 (1993); *see also United States v. Carrillo-Morones*, 564 F. Supp.2d 707,
710 (W.D.Tex. 2008); *United States v. McElwee*, 2009 WL 2922834 (W.D.La. 2009).
Thus, the primary concern in any case using experts or witnesses with some expertise is

providing notice.

2. The government shall provide to the defense a resume or other document summarizing the qualifications of each of the Expert Witnesses or Witnesses with Expertise, below identified .

Witnesses and Testimony - John Pettus and Gwendolyn Dove

3. North Texas Regional Computer Forensic Laboratory (NTRCFL) Forensic Examiners (FEs) John Pettus and Gwendolyn Dove are individuals having knowledge, skill, experience, training, education, and an expertise beyond the ordinary lay person regarding computer forensics. Each FEs' testimony will be adduced to assist the trier of fact to understand the evidence or to determine any facts in issue. FEs Pettus and Dove will provide testimony regarding the accepted procedures and methods in the field of computer forensics, the imaging of the data storage devices, making duplicate copies of the original image, processing the image with forensic tools, verifying the processes of imaging and copying, providing the Special Agents/case agents access to an exact copy of the originals, and duplicating specific portions of the exact copy for and at the request of the Special Agents.

4. The government shall provide to the defense any report(s) prepared by the NTRCFL FEs.

Witnesses and Testimony - Allyn Lynd and Ajeet Singh

5. Federal Bureau of Investigation Special Agents (SAs) Allyn Lynd and Ajeet Singh are individuals having knowledge, skill, experience, training, education, and an expertise beyond the ordinary lay person regarding computer intrusions and forensics. Each SAs' testimony will be adduced to assist the trier of fact to understand the evidence or to determine any facts in issue. SA Lynd and/or Singh will provide testimony related to the overall investigation, and may offer opinions or inferences "which are (a) rationally based on the[ir] perception . . . (b) helpful to a clear understanding of the[ir] testimony or the determination of a fact in issue, and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702." SA Lynd and/or Singh also will provide testimony, to include opinions and inferences, regarding their review and analysis of the data storage devices or of the remediation results in this case, to include but not limited to the following:

- a. the use of NCIS's Incident Response Toolkit (IRTK) in live response on the HVAC system;
- b. the transmissions of codes, commands, or programs to the WBCCW, HVAC, or Cirrus computers;
- c. which codes, commands and programs were attributable to McGraw;
- d. the Internet use (websurfing, establishing and accessing accounts, uploading or downloading files, programs, and images) attributable to McGraw; and

e. the import of the transmission of the codes, commands, or programs to the various systems at the North Central Surgery Center.

6. Besides testimony related to the overall investigation, SAs Lynd and Singh will provide testimony and render opinions and inferences as to their review and analysis of the below listed data storage devices or of the remediation results thereof, including but not limited to the following:

Computer	Events
HVAC	Logmein and Teamviewer installed, launched, or used; Downloaded and copied OphCrack; USB devices inserted; and Downloaded Cain and Abel.
WBCCW125	Accessed Administrator account; McAfee uninstalled; USB devices inserted; and RXBOT installed or quarantined.
WBCCW37	Logmein installed or used; and McAfee uninstalled;
WBCCW54	Logmein installed or used; and McAfee uninstalled;
WBCCW117	Accessed Administrator account; McAfee uninstalled; Logmein installed or used; RXBOT downloaded, installed, or quarantined
WBCCW123	Accessed Administrator account; McAfee uninstalled; Logmein installed or used; and RXBOT downloaded, installed, or quarantined

Computer	Events
WBCCW126	Accessed Administrator account; McAfee uninstalled; Logmein installed or used; Internet use; and RXBOT downloaded, installed, or quarantined
WBCCW133	Logmein installed or used
WBCCW110	Accessed Administrator account; McAfee uninstalled; Logmein installed or used; and malware Network Killaah found
WBCCW135	Accessed Administrator account; McAfee uninstalled; and RXBOT downloaded, installed, or quarantined
WBCCW141	Accessed Administrator account; McAfee uninstalled; Logmein installed or used; and DOS-HTTP installed or quarantined
WBCCW161	Accessed Administrator account; McAfee uninstalled; Logmein installed or used; and RXBOT downloaded, installed, or quarantined
WBCCW164	Accessed Administrator account; McAfee uninstalled; Logmein installed or used; Internet use
WBCCW175	Accessed Administrator account; McAfee uninstalled; Logmein installed or used; and RXBOT downloaded, installed, or quarantined
WBCCW201	Accessed Administrator account; McAfee uninstalled; Logmein installed or used; and RXBOT downloaded, installed, or quarantined

Computer	Events
Cirrus Group Dell Laptop	Accessed photobucket and gmail accounts; Images from videos, FBI credential, and of McGraw found; Chat sessions found; and Links to videos found
Dell Optiplex workstation	Images of McGraw and related to ETA found; Google Toolbar bookmarks installed; and Internet use
McGraw's laptop	Source code for RXBOT found; Accessed Photobucket and Logmeinds account; Images of ETA, from video, and of McGraw found; Key stroke logs, various scanners, and other hacking software; and eta.myvnc.com activation link

7. SAs Lynd and Singh reviewed additional disks and USB drives containing data related to, resulting from, or exhibiting the codes, commands, or programs transmitted.

8. Neither SA Lynd nor SA Singh prepared reports related to their review, examinations, or analysis of the data storage devices or the remediation results. If any charts, graphs, spreadsheets, power points, or summary document are created for trial with regard to the above, the same will be marked as exhibits and provided to the defense.

Witness and Testimony - Gregory Sterner

9. Gregory Sterner is an individual having knowledge, skill, experience, training, education, and an expertise beyond the ordinary lay person regarding systems and network operations, specifically related to the North Central Surgery Center.

Mr. Sterner's testimony will be adduced to assist the trier of fact to understand the

evidence or to determine any facts in issue. Mr. Sterner will provide testimony regarding the remediation efforts of the WBCCW computers, and the facts identified in the chart set out in paragraph 6 above as to the WBCCW computers. Mr. Sterner will testify about the import of the WBCCW computers and system, and how unauthorized access may modify, impair, and potentially modify and impair the system's operations.

10. Mr. Sterner did not prepare a report.

Witness and Testimony - Robert Hudson

11. Robert Hudson is an individual having knowledge, skill, experience, training, education, and an expertise beyond the ordinary lay person regarding systems and network operations, specifically related to HVAC systems and networks. Mr. Hudson's testimony will be adduced to assist the trier of fact to understand the evidence or to determine any facts in issue. Mr. Hudson will provide testimony regarding the HVAC computer, network, and system at the North Central Surgery Center. Mr. Hudson will testify about the import of the HVAC systems and how unauthorized access may modify, impair, and potentially modify and impair the systems' operations.

12. Mr. Hudson did not prepare a report.

Witness and Testimony - Robin Shaw

13. Robin Shaw is an individual having knowledge, skill, experience, training, education, and an expertise beyond the ordinary lay person regarding hospital administration and patient care. Ms. Shaw's testimony will be adduced to assist the trier

of fact to understand the evidence or to determine any facts in issue. Ms. Shaw will testify about the standards and thresholds permitted in surgical centers. Ms. Shaw will testify how environmental variables controlled by the hospital HVAC system, including temperature, humidity, and air pressure can and do affect medical examinations, diagnoses, treatments, and care of one or more patients in the surgical centers. Ms. Shaw also will testify about the import of the computer systems used by medical personnel at the North Central Surgery Center how an unauthorized access could modify, impair, and potentially modify and impair medical examinations, diagnoses, treatments, and care of one or more patients.

14. Ms. Shaw did not prepare a report, however the government is finalizing a spreadsheet provided by Ms. Shaw to be marked as an exhibit.

Respectfully submitted,

JAMES T. JACKS
United States Attorney

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CERTIFICATE OF SERVICE

I hereby certify that on April 16, 2010, I electronically filed the foregoing document with the clerk for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. The electronic case filing system sent a "Notice of Electronic Filing" to John Nicholson (McGraw's attorney) who consented in writing to accept this Notice as service of this document by electronic means.

S/ Candina S. Heath
CANDINA S. HEATH
Assistant United States Attorney